Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Review of the Commission's Regulations Governing Programming Practices of Broadcast Television Networks and Affiliates	)))	MM Docket No. 95-92

To: The Commission

COMMENTS OF NEW WORLD TELEVISION, INC.

Any rules governing the basic structure of an industry as dynamic as broadcasting should be reviewed periodically to determine whether the public policy objectives to which they are addressed remain valid, and whether they in fact promote those objectives. Like many of the other broadcast rules that the FCC has recently revised, eliminated, or taken under consideration, the five network/affiliate rules at issue in this proceeding, all based on the Commission's 1941 *Report on Chain Broadcasting*, are ripe for review.

On the other hand, the network/affiliate rules do not operate in isolation and they cannot be fairly analyzed out of context of the complex broadcast regulatory scheme that has evolved over many decades. Broadcast networks and local broadcast stations have for decades operated under myriad regulatory handicaps that their counterparts in the newer television industries have never faced. Because over-the-air broadcasting is a closed market, in the sense that the number of participants is limited by the allocated spectrum, the Commission has continually attempted to micromanage ownership, control, and bargaining power within the industry to be sure no player dominates the others or takes advantage of the public. The business practices of both networks and stations have been tightly regulated while unregulated competitors have grown around us. New World generally favors deregulation. However, unless the Commission deregulates both sides of the network/affiliate relationship at once, it risks fundamentally changing the local nature of the broadcasting industry.

The rules adopted in the *Report on Chain Broadcasting* were intended to remove barriers that would inhibit the growth of new networks and to help licensees retain sufficient control over their stations to fulfill their obligation to operate in the public interest. The latter goal was particularly important after the Commission began to strictly control the number of stations any broadcaster could own, since those limits ensured that television broadcast networks -- which also owned the largest station groups -- would always be bargaining the terms of affiliations with much smaller companies. The network/affiliate rules have helped to preserve the local character of television stations by limiting the degree of control over station programming decisions that stations may relinquish to networks. They prevent local stations from becoming mere passive distribution outlets for national programming.

New World believes that the aspects of diversity and localism that the *Chain Broadcasting* rules sought to advance in 1941 remain valid public policy objectives today. While the enormous growth of alternative video services may have somewhat eroded the policy underpinnings of rules that assist in the growth of new networks, the many fundamental changes in the video marketplace since the network/affiliate rules were adopted have had less effect on the network/affiliate relationship than the notice of proposed rulemaking suggests. The basic tension between networks and their affiliates has not changed. Networks that already cover the entire country can expand further, or compensate for loss of market share to cable and other multichannel providers, only by programming more of their affiliates' time. With certain exceptions, affiliates generally prefer to program and sell a significant portion of their own inventory locally. The overall fragmentation of the video marketplace has no effect on this fundamental equation. While the network/affiliate rules may no longer be necessary to ensure consumers have video programming alternatives, in general they help ensure that -- unlike most programming distributed by mulitchannel providers -- some programming decisions are made locally.

The network/affiliate rules have operated as a check against the evolution of broadcast television to a service, like the cable network/MSO model, that is dominated by national program suppliers. While some modification or relaxation of these rules may be appropriate, the Commission should recognize that the natural result of giving the networks increased bargaining power relative to affiliates will be the eventual appropriation of the more desirable local time periods by the networks. In the absence of a balance in network/affiliate bargaining power, local programming over time will tend to be replaced by network programming in the most-watched time periods.

<u>The Dual Network Rule</u>

New World is particularly concerned about the Commission's proposal to eliminate the dual network rule. The NPRM questions whether the dual network rule impedes broadcasters' ability to compete with cable and direct satellite broadcasting, and whether its elimination would allow networks to take advantage of economies of scale. Implicitly, the Commission asks whether the multichannel cable model, with its economies of scale, is a better model for the broadcast industry than the single channel model. But the cable model includes both multichannel *network sources* and multichannel *cable outlets.* While mere elimination of the dual network rule would clearly be a boon to the broadcast networks, which would gain enormous bargaining leverage against their single-channel affiliates, the affiliates would suffer a corresponding competitive disadvantage that would be harmful to the industry as a whole.

The only way to improve the competitive position of the broadcast industry as against the cable industry is to eliminate the dual network rule and the duopoly rule simultaneously. Eliminating the dual network rule alone would create the anomalous result that a network could provide national programming to two or more stations in every market, while a local broadcaster could own and provide local programming to only one station in any market. Unless the Commission chooses to leave the local television broadcaster as the last media enterprise in the United States that is limited by the government to a single voice in each community, it cannot eliminate the dual network rule without also eliminating the duopoly prohibition.[1] The Commission should also consider whether the national ownership caps should be lifted in the event the dual network rule is repealed. It is unacceptable and dangerous to eliminate artificial controls on networks' horizontal growth, and thus their bargaining power, while continuing to impose horizontal ownership limits on broadcast stations, and thus artificially limit stations' bargaining power against networks. The regulatory burden should be lifted simultaneously from both sides, or not at all.

The Dual Network Rule and ATV

The impetus for this rulemaking is the Commission's belief that old rules may no longer be appropriate in today's television marketplace. Any modifications of the rules made in this proceeding will be based upon a careful analysis of the current competitive environment. However, the competitive environment in the ATV world will be fundamentally different than the current environment, and thus any conclusions

---

[1] The dual network rule and the station ownership rules were adopted for the same purpose: to foster diversity and to prevent undue economic power. The dual network rule, after all, is a *local* concentration rule. It prevents one entity from controlling two simultaneous network feeds into the same community. *Cf. Review of the Commission's Regulations Governing Television Broadcasting Stations*, MM Docket No. 91-221 (Released January 17, 1995) at ¶ 83. ("...the video program delivery market is a local market.") If the Commission concludes that there is sufficient diversity to allow one national voice to speak simultaneously on two broadcast outlets in every community, it must conclude that one local voice may also speak through two local broadcast outlets in any community.

about these rules may not be valid in that context. For instance, the Commission is currently collecting comments on whether ATV stations should be allowed to multiplex their signals. The answer to that question may determine whether the digital world brings a sixfold increase in the number of local distribution outlets in each market and thus radically changes the balance of power between networks and affiliates.[2] Moreover, total elimination of the dual network rule in the context of ATV could result in a heavy bias towards multiplexed Standard Definition TV (SDTV) to the detriment of true HDTV. For these reasons, New World believes that any modifications to the network/affiliate rules under consideration here, and in particular the dual network rule, should be limited to the current NTSC channels. The complex issues raised by dual networking in the ATV world should be explored in the docket that is giving comprehensive review to those issues.

<u>The Time Option Rule</u>

For all the reasons discussed above, the time option rule should not be eliminated unless the local and national ownership rules are relaxed. In particular, a broadcast station that must compete with another local station, also programmed by its network, will be under extreme duress to yield to option demands by a network.

---

[2] The NPRM correctly recognizes that a key determinant of a broadcast network's bargaining power over an affiliate is the number of viable alternative outlets with which the network could affiliate. *Programming Practices of Broadcast Networks and Affiliates*, MM Docket 95-92, released June 16, 1995, at ¶ 4.

For instance, once the dual network rule is eliminated ABC could have two affiliates in a market. If it wanted to launch a new series by expanding into new, previously local time periods, it would have great leverage against both local affiliates. With the option time rule gone, it could bank clearances in advance. The affiliate that refused to option a particular block of local time to the network could face a loss of a different, popular prime time series, which the network could still clear in the market. On the other hand, if the local ABC affiliate owned two stations in the market, that broadcaster would be free to bargain for affiliation with both ABC networks, or hedge its bets by affiliating its two stations with different network suppliers. If ABC threatened to move a key series the affiliate might answer by threatening to move a popular, local lead-in program to its other station affiliated with a non-ABC network.

In no case should both the option time and the dual network rules be eliminated before the local and national ownership rules are relaxed.

The Right to Reject Rule

The NPRM proposes to keep the right to reject rule but clarify that it may not be invoked based solely on financial considerations. This aspect of the rulemaking appears to be a solution in search of a problem. New World is unaware of any recent case in which the Commission has been asked to adjudicate a dispute on this point. Moreover, the Commission conducted a comprehensive review of the current affiliation agreements used by all major television networks prior to adopting this NPRM, and the notice even acknowledges that some of those agreements already provide that purely financial preemptions are prohibited. Unless the Commission believes those agreements to be illegal under the current right to reject rule, there seems to be little point in having the FCC clarify a rule that has not been the subject of a formal dispute.

The Territorial Exclusivity Rule

The territorial exclusivity rule prohibits a station from entering into an agreement with a network that prevents (1) another station located in the same community of license from broadcasting those network programs not taken by the network affiliate; and (2) another station located in a different community of license from broadcasting any of the network's programs. Unlike the other network/affiliate rules, this rule limits what a station can demand from a network at the bargaining table. In keeping with New World's view that both sides must be deregulated together or not at all, New World supports the Commission's tentative conclusion that the first part of the rule should be eliminated. New World also agrees that stations should be free to bargain for exclusivity beyond their communities of license. The most appropriate limit of exclusivity is the DMA, which is generally coterminous with the real market in which television stations compete.

Conclusion

For the reasons discussed in these comments, New World asks the Commission to achieve regulatory parity by deregulating networks and stations at the same time. The Commission cannot leave the local television licensee as the last media player in the United States that is limited by the government to a single voice in each market.

Respectfully submitted,

NEW WORLD TELEVISION, INC.

By: John K. Hane III -DLP

John K. Hane III
3200 Windy Hill Road
Suite 1100 West
Atlanta, GA 30339

October 30, 1995